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Santa Monica, CA 90407-2161  
5 (310) 393-1486 Telephone; (310) 395-5801 Fax  
6 Attorneys for Cross-defendant Omar Rodriguez

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES  
10

11 OMAR RODRIGUEZ, etc., et al.,

12 Plaintiffs,

13 vs.

14 BURBANK POLICE DEPARTMENT; CITY  
15 OF BURBANK; AND DOES 1 THROUGH  
16 100, INCLUSIVE.

17 Defendants.

Case No. BC 414 602

**CROSS-DEFENDANT OMAR  
RODRIGUEZ' RESPONSE TO THE OSC  
RE SANCTIONS FOR FAILURE TO PAY  
JAMS FEES**

Date: August 31, 2011

Time: 9:00 a.m.

Dept.: 37

Assigned to: Hon. Joanne B. O'Donnell

18 BURBANK POLICE DEPARTMENT; CITY  
19 OF BURBANK,

20 Cross-complainants,

21 vs.

22 OMAR RODRIGUEZ, an individual,

23 Cross-defendant.  
24

25 **I. THE OSC SHOULD BE DISCHARGED**

26 This response is on behalf of Cross-defendant Omar Rodriguez in that he is the only party  
27 represented by Silver, Hadden, Silver, Wexler & Levine.  
28

RODRIGUEZ' RESPONSE TO THE COURT'S OSC RE SANCTIONS RE PAYMENT OF JAMS FEES

1 The OSC was set by the Court upon the August 15, 2011 ex parte application brought by  
2 Defendant City of Burbank (hereinafter the "City") apparently because of a concern that Judge  
3 Diane Wayne and JAMS, which were the appointed discovery referee, had not been paid.  
4 However, since the OSC was set, JAMS has been paid in full by Plaintiffs' counsel Solomon  
5 Gresen. Therefore, the OSC should be discharged.

6 However, Defendant City seeks to capitalize on the fact that the JAMS fees had not been  
7 paid in full. In that regard, the City has asked for terminating sanctions, couching purported  
8 discovery issues into their request. But sanctions are severe and terminating sanctions are  
9 extreme. As shown by the Declaration of Cross-defendant Rodriguez, he did not receive a bill  
10 from JAMS for any services rendered and until recently when this issue was raised, he did not  
11 know there was an obligation to pay JAMS, that there were fees owed to JAMS, nor did he know  
12 that any fees to JAMS were outstanding. As a result, it would be improper to sanction Cross-  
13 defendant Rodriguez.

14 Further, on August 15, 2011, the City filed an ex parte motion seeking an order shortening  
15 time to file discovery motions even though the City had presented no "irreparable harm, immediate  
16 danger, or any other statutory basis for granting relief ex parte". The OSC re sanctions filed by the  
17 City relates in large part to the issues set forth in those motions but all of the issues other than the  
18 need to pay JAMS were deemed to be "moot". As the motions were deemed moot by this Court,  
19 the City has not been affected by the fact that there was a delay in paying JAMS.

20 The JAMS fees have been paid in full and the City has suffered no harm that would justify  
21 causing Cross-defendant Rodriguez, who knew nothing about the fees, to be sanctioned.  
22 Therefore, the OSC should be discharged.

23 Respectfully submitted,

24 Dated: August 30, 2011

SILVER, HADDEN, SILVER,  
WEXLER & LEVINE

26 By: 

KEN FUWILER  
Attorneys for Cross-defendant Omar  
Rodriguez

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**DECLARATION OF KEN YUWILER**

I, Ken Yuwiler, declare:

1. I am an attorney with Silver, Hadden, Silver, Wexler & Levine, the attorneys of record for Cross-defendant Omar Rodriguez herein. It is my understanding that the only matter presently involving Omar Rodriguez in this case is the City's Cross-complaint against Cross-defendant Rodriguez.

2. The OSC re sanctions for failure to pay JAMS fees should be discharged. As shown by his declaration Cross-defendant Rodriguez did not receive a bill for JAMS fees, did not know that JAMS fees were owed, did not know that JAMS fees were outstanding, and was in no financial position to pay any such fees. Sanctions are severe. Terminating sanctions, which have been requested by the City are extreme. Given Cross-defendant Rodriguez' lack of knowledge, he should not be sanctioned and the OSC should be discharged.

3. To my knowledge, no JAMS fees have been incurred since my office has been representing Cross-defendant Rodriguez. I certainly have no knowledge of any issue involving Cross-defendant Rodriguez being presented to JAMS since my office has represented Cross-defendant Rodriguez.

4. I understand that the JAMS fees have now been paid in full by Plaintiffs' counsel, Solomon Gresen. A copy of the receipt for payment in full is attached hereto as Exhibit "A".

5. I understand that the City has suffered no damages as a result of the fact that JAMS fees had not been paid. Indeed, there is no evidence that they have suffered any damages. In fact, although the discovery cut off has expired and without waiver of all arguments regarding the propriety of doing so, I allowed the City to take the deposition of a third party witness (Tina Gurn) which had been noticed before the discovery cut-off and which had not been taken only because a motion for protective order had been filed by Mr. Rodriguez' prior counsel. Further, on August 15, 2011, the City filed an ex parte motion seeking an order shortening time to file discovery motions. Those motions were deemed "moot" by this Court. (A copy of the minute order is attached hereto as Exhibit "B".) The OSC re sanctions filed by the City relates in large part to the

1 issues set forth in those motions. As the motions were deemed moot by this Court, the City has  
2 not been affected by the fact that there was a delay in paying JAMS.

3 5. Exhibits "A" through "B" herein are true and correct copies of documents preserved  
4 and maintained by my office in the ordinary course of business.

5 I declare under penalty of perjury that the foregoing is true and correct under the laws of  
6 the State of California and that his declaration was executed on this 30th day of August, 2011, at  
7 Santa Monica, California.

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10 KEN YUWILER  
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**DECLARATION OF OMAR RODRIGUEZ**

I, Omar Rodriguez, declare:

1. I am a Cross-defendant herein.

2. I did not receive a bill from JAMS for services regarding this matter.

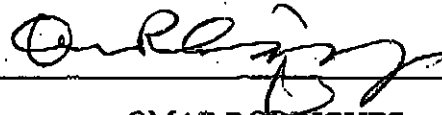
3. Until in or about August, 2011, when the issue was raised by the City, I did not know there was any obligation to pay JAMS, that there were fees owed to JAMS, nor did I know that there were any fees to JAMS that were outstanding.

4. I was terminated by the City in or about April, 2010. Under the circumstances, I am in no financial position to pay any fees to JAMS.

5. I understand that the fees due JAMS have now been paid in full by Solomon Gresen.

6. I respectfully request that no sanctions be issued and that the OSC be discharged, in part, for the reason set forth herein.

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California and that his declaration was executed on this 30th day of August, 2011, at Santa Clarita, California.



OMAR RODRIGUEZ

05833-pld.wpd



THE RESOLUTION EXPERTS

## STATEMENT OF ACCOUNT

Statement Date  
08/29/2011

TO: Solomon E. Gresen, Esq.  
Rheuban & Gresen  
15910 Ventura Blvd.  
Suite 1610  
Encino, CA 91438

Reference #: 1220040470 JF  
Billing Specialist: Tiffany Williamson  
Telephone: 949-224-4606  
Employer ID: 68-0542699

RE: Rodriguez, Omar, et al. vs. Burbank Police Department, et al.

Representing: Omar Rodriguez  
Cindy Guillen-Gomez  
Steve Karagioulan  
Elfraga Rodriguez  
Jamal Childs

Neutrals(s): Hon. Diane Wayne (Ret.)

Hearing Type: Court Reference

REP# 1

Date	Description	Charges	Credits	Balance
10/09/2009	INVOICE #0001840245-220	3,700.00		3,700.00
10/30/2009	INVOICE #0001861081-220	1,357.22		5,057.22
11/05/2009	CK #9677 Paid By: Rheuban & Gresen		2,050.00	3,007.22
11/30/2009	INVOICE #0001883419-220	304.81		3,312.03
12/10/2009	CK #9750 Paid By: Rheuban & Gresen		3,007.22	304.81
12/30/2009	INVOICE #0001895027-220	754.26		1,059.07
01/19/2010	CK #9760 Paid By: Rheuban & Gresen		304.81	754.26
01/20/2010	CK #9862 Paid By: Rheuban & Gresen		1,059.07	(304.81)
	18489-220	600.00		285.19
	#0001929554		600.00	(304.81)
	29823-220	10,418.75		10,113.94
	#0001931320		3,000.00	7,113.94
	31321-220	3,000.00		10,113.94
	#0001949608		450.00	9,663.94
	49609-220	2,663.26		12,327.20
	51537-220	3,300.00		15,627.20

1599 Main St  
Encino, CA 91438  
949-224-4606

Merchant ID: 0000000000  
Term ID: 0000000000

Phone Order

0000000000

VISA

Entry Method: Manual

Total: \$ 9,355.22

08/29/11 12:38:47

Inv #: 0000000000

Ref Code: 375013

Approved Online

APR Code: ZIP MATCH Z

CVR Code: MATCH N

YOUR ACCOUNT BALANCE IS DUE UPON RECEIPT  
Please make checks payable to JAMS, Inc. and mail to:

P.O. BOX 512660  
Los Angeles, CA 90051-0660

Page 1 of 3

Exhibit "A" - Page 1 of 3

000006



THE RESOLUTION EXPERTS

RE: Rodriguez, Omar, et al. vs. Burbank Police Department, et al.

Representing: Omar Rodriguez  
Cindy Guillen-Gomez  
Steve Karagiosian  
Eliego Rodriguez  
Jamal Childs

Neutrals(s):

Hon. Diane Wayne (Ret.)

Hearing Type: Court Reference

Reference #: 1220040470

REP# 1

Date	Description	Charges	Credits	Balance
03/02/2010	CK #9928 Paid By: Rheuban & Gresen		295.19	15,352.01
03/03/2010	INVOICE #0001952151-220	330.00		15,682.01
03/26/2010	CK #9932 Paid By: Rheuban & Gresen		10,113.94	5,568.07
03/31/2010	INVOICE #0001974365-220	660.00		6,228.07
04/01/2010	CK #10008 Paid By: Rheuban & Gresen		2,663.26	3,564.81
04/05/2010	CK #10023 Paid By: Rheuban & Gresen		3,300.00	244.81
04/08/2010	CK #10035 Paid By: Rheuban & Gresen		330.00	(85.19)
04/30/2010	INVOICE #0001997765-220	663.48		578.27
05/03/2010	CK #10091 Paid By: Rheuban & Gresen		660.00	(81.73)
05/06/2010	INVOICE #0002001281-220	2,200.00		2,118.27
05/26/2010	INVOICE #0002014827-220	6,600.00		8,718.27
05/27/2010	CREDIT MEMO # #0002015090		3,000.00	5,718.27
05/28/2010	INVOICE #0002018741-220	3,030.00		8,748.27
06/17/2010	CK #11102 Paid By: Rheuban & Gresen		578.27	8,170.00
06/30/2010	INVOICE #0002046921-220	980.00		9,130.00
07/29/2010	INVOICE #0002063531-220	660.00		9,790.00
07/29/2010	INVOICE #0002063535-220	3,300.00		13,090.00
08/05/2010	CK #11206 Paid By: Rheuban & Gresen		8,170.00	4,920.00
08/18/2010	CK #11268 Paid By: Rheuban & Gresen		960.00	3,960.00
08/23/2010	INVOICE #0002083012-220	3,300.00		7,260.00

Page 2 of 3



THE RESOLUTION EXPERTS™

RE: Rodríguez, Omar, et al. vs. Burbank Police Department, et al.

 Representing: Omar Rodriguez  
 Cindy Guillen-Gomez  
 Steve Karagiosian  
 Eliego Rodriguez  
 Jamal Childs

Neutrals(s):

Hon. Diane Wayne (Ret.)

Hearing Type:	Court Reference	Reference #:	1220040470	REP# 1
Date	Description	Charges	Credits	Balance
09/16/2010	CK #11357 Paid By: Rheuban & Gresen		7,260.00	0.00
09/30/2010	INVOICE #0002117742-220	907.50		907.50
11/02/2010	CK #11435 Paid By: Rheuban & Gresen		907.50	0.00
11/30/2010	INVOICE #0002167008-220	3,465.81		3,465.81
12/08/2010	INVOICE #0002172790-220	6,600.00		10,065.81
01/20/2011	CK #11601 Paid By: Rheuban & Gresen		3,465.91	6,599.90
01/25/2011	INVOICE #0002204766-220 *	2,314.10		8,914.00
02/14/2011	CK #11684 Paid By: Rheuban & Gresen		6,600.00	2,314.00
02/15/2011	CREDIT MEMO # #0002224985		300.00	2,014.00
02/15/2011	INVOICE #0002224986-220	300.00		2,314.00
02/25/2011	CK #11708 Paid By: Rheuban & Gresen		2,314.10	(0.10)
03/03/2011	CK #11723 Paid By: Rheuban & Gresen		300.00	(300.10)
03/31/2011	INVOICE #0002266190-220	8,091.88		7,791.76
04/29/2011	INVOICE #0002294486-220	5,036.52		12,828.28
05/31/2011	INVOICE #0002318636-220	168.03		12,996.31
06/30/2011	INVOICE #0002345642-220	1,248.91		14,245.22
08/29/2011	CREDIT MEMO # #0002390609 *		4,980.00	9,265.22
08/29/2011	CK #VS-379813 Paid By: Steven V. Rheuban, Esq.		9,265.22	0.00

Outstanding Balance: 0.00

Page 3 of 3

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/15/11

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE

E.T. ESPINOZA

DEPUTY CLERK

HONORABLE  
#

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

P MAPSTEAD, C.A.,

Deputy Sheriff

C. KWON-CHANG, # 12143

Reporter

9:00 am BC414602

Plaintiff  
Counsel

ROBERT HAYDEN (X)

OMAR RODRIGUEZ ET AL

VS

Defendant  
Counsel

VERONICA VON GRABOW (X)

BURBANK POLICE DEPARTMENT ET AL

LAWRENCE MICHAELS (X)

170.6 DAVID P. YAFFE

MICHAEL SIMIDJIAN (X)

R/F 7-27-09 Denied as to BC4179

## NATURE OF PROCEEDINGS:

EX PARTE APPLICATION OF DEFENDANT AND CROSS-DEFENDANT  
CITY OF BURBANK FOR AN ORDER SHORTENING TIME ON  
BURBANK'S MOTION FOR TERMINATING SANCTIONS AND OTHER  
ORDERS AGAINST PLAINTIFFS CINDY GUILLEN-GOMEZ, STEVE  
KARAGIOSIAN, AND OMAR RODRIGUEZ

Matter is called for hearing.

The Court hears argument.

An order to show cause is set for August 31, 2011,  
9 a.m., this department why terminating sanctions  
should not be issued against all 3 plaintiff's for  
failure to pay the discovery referee.

The remainder of the ex parte is moot.

Notice waived.

**PROOF OF SERVICE****STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1428 Second Street, P.O. Box 2161, Santa Monica, California 90407-2161.

On August 30, 2011, I served the foregoing document described as **CROSS-DEFENDANT OMAR RODRIGUEZ' RESPONSE TO THE OSC RE SANCTIONS FOR FAILURE TO PAY JAMS FEES**, on the parties in this action via facsimile and by placing a true copy thereof to the representative of each of the parties set forth below:

**SEE ATTACHED SERVICE LIST**

☒ [By Mail] I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it would be deposited with the U.S. Postal Service with postage thereon fully prepaid at Santa Monica, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ [By Facsimile] At approximately \_\_\_:\_\_\_ p.m. on this 30th day of August, 2011, I also sent said document via facsimile from facsimile machine telephone number (310) 395-5801. The transmission was reported as complete and without error.

☒ STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 30, 2011, at Los Angeles, California.

CHERYL L. MITCHELL



**SERVICE LIST****Plaintiff's counsel:**

Solomon E. Gresen, Esq. (Via fax - 818-815-2737)  
Steven V. Rheuban, Esq.  
Law Offices of Rheuban & Gresen  
15910 Ventura Boulevard, Suite 1610  
Encino, California 91436

**Defendant City of Burbank's counsel:**

Lawrence A. Michaels, Esq. (Via fax - 310-312-3100)  
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11377 West Olympic Boulevard  
Los Angeles, California 90064-1683

Linda Miller Savitt, Esq. (Via fax - 818-506-4827)  
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500 N. Brand Blvd., Twentieth Floor  
Glendale, CA 91203-9946

Carol A. Humiston, Esq. (Via fax - 818-238-5724)  
Senior Assistant City Attorney  
City of Burbank  
275 E. Olive Ave.  
Burbank, CA 91510

**SILVER, HADDEN, SILVER, WEXLER & LEVINE**

A PROFESSIONAL LAW CORPORATION

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WILLIAM J. HADDEN  
SUSAN SILVER  
ROBERT M. WEXLER  
RICHARD A. LEVINE  
KEN YUWILER  
ELIZABETH SILVER TOURGEMAN  
HOWARD A. LIBERMAN  
MICHAEL D. SCHWARTZ  
MICHAEL SIMIDJIAN

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TELEPHONE (323) 870-0900  
FACSIMILE (310) 395-5801

WORKER'S COMPENSATION  
OF COUNSEL  
STEVEN E. KAYE

DATE: August 30, 2011 FAX NO: (818) 238-5724TO: Carol A. Humiston, Sr. Assistant AttorneyOF: City of BurbankFROM: Ken YuwilerDOCUMENT TRANSMITTED: Rodriguez' Response to the Court's OSC re Sanctions re Payment of JAMS FeesNUMBER OF PAGES: 12 (including this cover sheet)

COMMENTS: \_\_\_\_\_

SHOULD ANY PROBLEM OCCUR DURING TRANSMISSION, PLEASE CALL (310) 393-1486.

CLIENT: RODRIGUEZ BILLING NO: 58-10442☐ Original will not follow.☒ Original will follow by:☒ First Class Mail☐ Certified Mail, Return Receipt Requested☐ Federal Express☐ Other (specify) \_\_\_\_\_TRANSMITTED BY: Cheryl

THIS MESSAGE IS INTENDED ONLY FOR THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE.